IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

WP No. 204 of 1993

Between :
St.Andrew's High School .. Petitioner

And

Mandal Revenue Officer,
Balanagar Mandal, R.R.District ..
Respondent

Dated : 12th September, 2006

ORAL ORDER :

These two petitioners claim to be the brothers. According to the affidavit filed in support of the writ petition, they were lessees of agricultural land of an extent of Ac.4.04 gts in Sy. No. 52 part in Bowenpally, Hyderabad taluk and district. It is asserted that one Sri G.Ramchandra Reddy and the petitioners purchased the same from the above mentioned Ramachandra Reddy on 11.6.1972. It is not known whether the purchase is by way of registered sale deed or not. The affidavit is silent in this regard. It appears subsequent to the alleged purchase, the petitioners filed OS No. 27 of 1987 on the file of the Addl. Subordinate Judge, R.R. District for a declaration of title and for a permanent injunction against the above mentioned Ramachandra Reddy and eight others. In substance, the suit was not contested and

therefore the suit came to be decreed on 17.3.1987.

The petitioners claim that they constructed a school in the above mentioned property in the year 1988.

The respondent issued a notice dated 29.1.1992 under Section 7 of the A.P. Land Encroachment Act. The petitioners replied to the notice and a final notice under Section 6 of the Act came to be issued in the month of March, 1992 proposing to evict the petitioners from the above mentioned property. Hence, the present writ petition with the prayer as follows :

> "For the reasons stated in the affidavit filed in support of the writ petition, the petitioner herein prays that this Hon'ble High Court may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction after calling for the records from the respondent in B. No. 5502/90 dated X-11-1992 served on the petitioner on 4.12.1992 and to quash the same and pass such other order or orders it deems just and necessary in the case."

Under Section 2 of the Land Encroachment Act, it is declared that all lands wherever situated are the property of the government except those lands which are covered under Categories A to E enumerated in the said section. Section 2 reads as follows :

"2. Right of property in public roads, etc., water and lands :- (1) All public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks and all canals and water-courses, and all standing and flowing water, and all lands, wherever situated, save in so far as the same are the property,-

(a) of any zamindar, poligar, mittadar, jagirdars, shrotriemdar or any person claiming through or holding under any of them, or

(b) of any person paying shist, Kattubadi, jodi, poruppu or quit-rent to any of the aforesaid persons, or

(c) of any person holding under ryotwari tenure, or in any way subject to the payment of land-revenue direct to Government; or

(d) of any other registered holder of land in proprietary right, or

(e) of any other person holding land under grant from the Government otherwise than by way of licence,

and as to lands, save also in so far as they are temple sites or owned as housesite or backyard.

> be and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easements rights of other land owners, and to all customary rights legally subsisting.
> (2) All public roads and streets vested in any local authority shall, for the purposes of this Act, be deemed to be the property of Government."

When a notice under the Act seeking the eviction of a person on the ground that it is a government land, the onus is on the petitioner to establish that the property in dispute is not government property, but a land which is covered by the various categories covered under (a) to (e) enumerated in Section 2.

If the recipient of the notice is not able to convince the authority issuing the notice under Section 6 of the Act, a further appeal is provided under Section 10 of the Act. The question whether the land in dispute is owned by the government or land falling under any one of the six enumerated categories exempted from the operation of the Land Encroachment Act is a question of fact to be decided on evidence. This Court in exercise of the jurisdiction under Article 226 of the Constitution of India is ill-suited for such an enquiry as it is consistently

held by the Supreme Court and the High Court that disputed questions of fact, more particularly, questions of title are not normally examined in a proceeding under Article 226 of the Constitution of India.

In the circumstances, the writ petition is misconceived and the same is dismissed.

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knk 12.09.2006